S.B.Civil Misc.Appeal No.397/93
Ashok Kumar vs. M/s Narendra Road Lines & anr.

Date of Order: 14.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr.Pawan Ojha for the appellant.

Heard learned counsel for the appellant.

This appeal is against the order dated 12.8.1993 passed by the District Judge, Udaipur in Execution Case No.35/1989. It appears from the facts of the case that an award was made rule of the court on 21.9.1989 by the court of District Judge, Udaipur. The appellant decree holder sought execution of the said award which became rule of the court by the order of the District Judge, Udaipur dated 21.9.1989. In execution, the decree older prayed that some amount of the judgment debtor is lying deposited in M/s Ganganagar Sugar Mills, Jaipur, therefore, said amount may be attached under Order 21 Rule 46,C.P.C. On this application, the notices were issued and order restraining M/s Ganganagar Sugar Mills, Jaipur, not to pay the amount to the judgment debtor was passed by the court below. This order was came up for consideration of the District Judge, Udaipur when objection was submitted by the M/s Ganganagar Sugar Mills, Jaipur. According to the objector the M/s Ganganagar Sugar Mills, Jaipur, the court at Udaipur had no jurisdiction to pass any order with respect to the property which

is not situated within territorial jurisdiction of the Udaipur court. The learned District Judge allowed the said objection on the ground that in fact the property of the objector could not have been attached under Order 21 Rule 46, C.P.C. as it was beyond the territorial jurisdiction of the court.

The learned counsel for the appellant submitted that the decree was passed by the District Court, Udaipur and the award dated 19.12.1988 became executable. The decree can be executed by the court which has passed the decree and in this case, the court of District Judge, Udaipur passed the decree, therefore, the decree holder rightly submitted execution petition in the court of District Judge, Udaipur. It is also submitted that the decree is money decree and, therefore, the appellant sought recovery of the amount by attaching the money of the judgment debtor which was lying with the M/s Ganganagar Sugar Mills, Jaipur. For this, specific provisions are made under Order 21 Rule 46, C.P.C. It is also submitted that the court below has committed error of law by accepting the objection of the M/s Ganganagar Sugar Mills, Jaipur and in the alternative the court of the District Judge, Udaipur should have sent the certificate for execution of decree to the court at Jaipur.

I considered the submission of the learned counsel for the appellant. It is clear from the facts mentioned above itself that the

decree though was passed by the court of District Judge, Udaipur and the decree could have been executed by the court of District Judge, Udaipur provided the property from which the amount is to be recovered is lying or situated within the territorial jurisdiction of the court where the execution of the decree is going on. Since the decree holder sought recovery of the money from the hands of the third person, who admittedly had its office at Jaipur out side the territorial jurisdiction of the court at Udaipur and the money was also lying at Jaipur, therefore, the executing court should have transferred the decree for execution to the court at Jaipur. The order passed by the court below suffers from no error of law or any error of fact. So far as the transfer of the execution petition to the court at Jaipur or any other place is concerned, for that purpose, the appropriate steps should be made by the decree holder in the execution as provided under Rule 6 of Order 21, C.P.C.

In view of the above, the appeal is dismissed. The record be sent to the executing court forthwith.

(**PRAKASH TATIA**),J.

mlt.